App. F. IX-4

1936.

File No. 230-36

Previous References

Serial Nos. 1-2

PRESERVED

Letter References.

Preserve

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. Two

Part B for August 37

SUBJECT.

Release of accused A Baptist who was convicted by the 1st Class Magistrate, Hassan

Group 672-49(1-8-37

WD 0418—GPB—22,500—20-8-36

See here

Serial No.

From

The Dist Magistrate

Hassan.

Letter no. JI – 343/36-37, dated 20th May 3

Requests whether the Recovery of Rs 208/- from the Sureties of one A. Baptist who was Convicted and Sentenced to imprisonment & fine (~~through the Agency of the Postal and Re departments~~) can go to the benefit of the accused for the termination of the default Sentence, although the fine was not Rece by the execution of the Warrants issued the Court.

1) It is reported that one A. B ~~was~~ Ex-Branch Post Master of Banavar Convicted and Sentenced in 3 cases 1 9 months R. I. and a fine of Rs 270/- default to undergo Rigorous imprisonment 6 months in all. It was further order by the Court that out of the fine, if Recovered, a Sum of Rs 207-8-6 be paid to the Postal department.

2) A Sum of Rs 208/- is Rep to have been realised from the Sure of the accused at the instance of

WD 0417—GPB—30,000—8-9-36

Serial No.

Postal department. Fine Warrants issued by the Court are stated to have been returned un-executed as the accd had no properties, moveable or immoveable

3) It is seen from the letter (Copy) of the Superintendent, Central Jail, (Flap N) that the accused has completed his substantive term of imprisonment and is undergoing default sentence from 14-4-37.

4) The point for consideration is whether the recovery of the sum from the sureties of the accused can go to the benefit of the accused for the termination of default sentence. It appears to be quite reasonable to extend this benefit to the accused since the very sum ordered by the Court to be paid to the Postal Departme has been recovered though not at the instance of the Court. Further, the accused has undergone his substantive term of imprisonment in full and also has undergone one month and one week's imprisonment by no of

6581

Serial No.

his default Sentence which must have taught him a good lesson for his follies.

5) The Govt Advocate may perhaps be Consulted in the matter.

Submitted for orders.

24/5.

6) The fine amounts have not been recovered in pursuance of the warrants issued by Court for such recovery; nor have the amounts been paid into Court towards the fine inflicted upon the accused. The amount now received, relates to the recovery by the Postal Department through the Revenue Agency, from the sureties of the accused.

7) I do not, therefore, think it is possible to give the accused the benefit of such realisation and treat it as realisation towards the fine inflicted by Sentence of the Court.

SECRETARY
24 MAY 1937
2610

BKR 24.5.37

Gen. Secy) 8) Please ask Hy. G. also

hw 25/5

C.O.No. P 190/36 Dated 25/5/37. Forwarded, with compliments, to the Government Advocate, for favour of advice

Dno 875/36—37 By 25-5-37

BKR Ramakrishna Aiya for Gen. Secy 25,5

NOTE—Contn. Sheet.

WD 0417—GPB—30,000—8-9-36

6587

of 193

General and Revenue Secretariat

Serial No.

No. DO. 187/38-39
dt 3.6.37

) Returned with compliments.

A copy or copies of the bonds executed by the sureties and the copies of the Judgments where the fines were inflicted may kindly be got and the file returned.

M. Narasimha Murthi
Government Advocate.

CSN/3.6.37

GENERAL SECRETARIAT
4 JUNE 19
Pro

10) Reference. Para 8

BXR 4.6.37

Gen. Secy) Please do the

X X X

Put up 5/6/37

12) Immediate Draft

BXR 5.6.37)

GENERAL SECRETARIAT
4 JUNE 1937

13) Submit a dft. for approval.

14) Mine now

BXR 5.6

Ref

Ref No P. 6782, dt 7-6-37

Sec A
8-6-37

From

The Dist Magt

Hassan

Letter no JI - 343/ 36-37, dated 10-6-37

forwards a copy of judgment passed.

15) The Dist Magt, Bangalore

6983

General and Revenue Secretariat | File No. Law of 193 . | [App. F. III—2

Serial No.

has forwarded copies of judgment passed in the cases. As regards the bonds executed by the Sureties of the accused it is reported that they might have been returned to the parties by the Postal authorities after cancellation on realisation. A reference is said to have been made to the Supdt of Post offices for sending them. ~~They will be awaited.~~ In the meanwhile the copies of judgment received may be forwarded to the Govt Advocate. ~~for~~ Submitted for orders.

Reference para 9.

G.O.No.P 138 to 36 dated 12.6.37

16) Forwarded with compliments from Govt Advocate for favour of advice—

B K Ramakrishnaiya
Dy Gen. Secy
12.6.37

J.No 909/36-37
dy 12-6-37

No. 187
dy 8-6-37
8-6-37

Returned with compliments.

17) The Surety Bonds requested to be sent in my earlier note (para 9 of the file) are not available but as it has been stated by the learned District Magistrate, Hassan in his letter of 10-6-1937 and bearing No. J1-343/36-37 that the bonds were not given to Court, I think it is not necessary to await

WD 0417--GPB—30,000-8-9-36

them especially as the question involved is one of detention of a prisoner.

18) The money said to have been realized is not in pursuance of ~~this~~ The or any order of the Court or in enforcement of any obligation incurred therein and so it cannot be made to relate to the order of fine ~~and~~ or the award of compensation out of it to the authorities concerned.

19) At the same time I do not think that the Postal authorities would care to insist upon compensation out of the fine being paid when their claim has been otherwise satisfied.

20) In these circumstances I should like to suggest for the benefit of the prisoner, that the High Court may be moved to amend the sentence by deleting the default clause.

Muthulingam Nadarajah
Government Advocate.

CSN/18.6.37

GENERAL SECRETARY
19 JUNE 1937
3443

21) Please put up the papers received to day from the District Magistrate Hassan & we submit

BAR
23.6

From

The Dist. Mag
Hassan
Letter no T1 — 343/36-37, dd 17-6-37
sends a copy of letter from the Supt of Post &
22) Submitt.

Serial No.

23) Reference para - 8.

The Government Advocate agrees with me that the money realised cannot be made to relate to the amount of fine or the award of Compensation out of it to the authorities concerned.

24) He suggests however, that in view of the claim of the Postal Department being otherwise satisfied, the High Court may be moved to amend the Sentence by deleting the default clause. He probably means that action may be taken either under Section 438 or Section 439 of the Criminal Procedure Code.

25) The District Magistrate does not, even in his latest Communication (P.W.D II) make a recommendation in favour of the accused.

26) If the Govt. is inclined to view the matter sympathetically, I think that action may be taken under Section 401 Cr. Pr.C in preference to the Course suggested by the learned Government Advocate.

A

Gen. Secy 27) Will A/S. Please speak with me re this in the evening today.

PWD 26637

PWD 29/6

28) A. Please ask GA whether this may not be done - PWD 1/7

It appears the sentences should have been served out by now.

WD 0594—GPB—30,000—12-7-35

File No. of 193 | General and Revenue Secretariat

29) Forwarded with Compliments from Government Advocate for favour of advice —

G.O. No. P 1037 dated 13th July 37 From 36/37-38 dt 13.7.37

for Sec'y

Returned with compliments. —

G.O. No. 6/37-3 dt 14.7.37

I do not think there can be any technical or legal objection to the application of Section 401 of the Code of Criminal Procedure to this case.

I suggested moving the High Court because if the matter should be taken up under Section 401 certain formalities as provided in Sub Section 2 of that provision may have to be observed, e.g., getting the opinion of the Court which convicted the Petitioner. Presumably, it would be better to take the opinion of the very Officer who convicted him and that cannot be done in this case, because he has been transferred elsewhere. If the petition of the accused dated 14th June 1937 should be considered as a petition under Section 401, then alone this formality will have to be observed. But the wording of that petition may not attract the Section because in the last paragraph, he seeks reference to the High Court which excludes the possibility of application of Section 401.

Though moving the High Court is exactly what is suggested by the Petitioner and therefore from his point of view though it may be more appropriate to do so, as mentioned already, there is really no

Release of A. Baptist, accepted in C...
Nos 31, 32, & 30/36-37 on the file of the
Spl I class Magt, Hassan.

General and Revenue Secretariat

File No. of 193 [App. F. III—4

Law

DEWAN'S OFFICE
21 JULY 1937
No. 483

Serial No.

GENERAL SECRETARY.
16 JULY 1937

legal impediment to the exercise of the clemency by the Government under Section 401 of the Code of Crl. Procedure should they deem this a fit case for - showing mercy.

Mysore. Meenakshisundaram Pillai
Government Advocate.

CSN/15.7.37

31) For perusal - The substantive portion of the sentence is not affected by the application for pardon. The default portion may perhaps be remitted in view of the fact that the amount due to the postal department has been recovered from others and the greater part of the purpose for which the fine was imposed has been served.

Dewan
16/7/37
BKR

32) MS 16.7.37
16.7.37
BKR
17/7

Chief Secy

Chief Member

3) J/M
19/7

34) For favour of appl and orders on disposal of
Dewan

Dewan
21/7/37
BKR
21/7

21-7-37.

WD 03594—GPB—30,000—18-7-35

10 10

737
7150

File No. of 193 General and Revenue Secretariat

Ch Secy/we for favouring circ: to Secs/members
Rw 22/7/37

C. S.
Circulation memo may be put up.
MS
22/7

Cir. Memo put up
CPA.

For Disposal by Circulation. **No. C. 35**

of 1937-38

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

DEWAN'S OFFICE
1937
No. 572

Subject

Release of A. Baptist, accused in C.C. Nos. 31, 32 and 38/36-37 on the file of the Special First Class Magistrate, Hassan.

Circulated to the Members of Council.

By Order,

Chief Secretary to Government.

23rd July 1937

First Member of Council. Seen.

602
26.7.1937 **Second Member of Council.** 26/7/37

For favour of final note

First Member) 26.7.

Submitted to His Highness.

These papers relate to a proposal to release one A. Baptist, ex-Branch Post Master, Banavar, who was convicted and sentenced to nine months rigorous imprisonment and a fine of Rs.270/- and in default to undergo rigorous imprisonment for six months. It was further ordered that out of the fine recovered, Rs.207-8-6 should be paid to the Postal Department. It is reported that at the instance of that Department, a sum of Rs.208/- has been realised from the sureties of the accused. The substantive term of imprisonment has been undergone by the accused, and he is now undergoing only the sentence in default of payment of fine. It is now proposed to take action under Section 401 of the Criminal Procedure Code and release the accused, in view of the fact that the amount due to the Postal Department has been recovered. The Dewan and the Second Member of Council agree with this proposal and it may be graciously approved.

T.R. Rangagopal

Bangalore,
27th July 1937.

FIRST MEMBER
IN CHARGE OF THE DUTIES OF THE D[illegible]

Record of Cases submitted for the Orders of
His Highness the Maharaja.

Subject.

Release of accused A. Baptist convicted by the Special First Class Magistrate, Hassan.

Sec'y
Spl
31/7

Order.

~~KRW~~
28/7/37

HMS
31.7.37

General and Revenue
Secretariat.

SUBJECT :— Release of accused A. Baptist convicted by the Special First class Magistrate Hassan.

(*)

31. All urgent or confidential files returned with His Highness' orders may in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Members of Council for perusal of His Highness' orders before/~~after~~ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.)

Chief Secretary to Government.

Through the Secretary to Government,
.....General..... Department. 2/8/37

FIRST MEMBER OF COUNCIL. (Seen)

936
2.8.37

SECOND MEMBER OF COUNCIL. 2/8/37

Gen. Secy. with Compliments.

2/8

GENERAL SECRETARY.
4 AUG. 1937
873

X+X 3/8 Draft to-day. 3.8

NOTE.—Contn. sheet.

6-8-37

WD 1170—GPB—1,000—24-12-36

Subdt. with a dft. for approval may be approved

G-D-No. 672, D. 4-8-37 3/8 Issue to-day (Gen. Secy.) 4/8

Sir,

I have the honor to state that one A. Baptist Ex-Branch Post Master of Banavar was convicted by the Special First Class Magistrate, Hassan in 3 cases and sentenced to 9 months' rigorous imprisonment and a fine of Rs270/- and in default to undergo rigorous imprisonment for 6 month in all as detailed in the margin.

Out of the fine, if recovered, a sum of Rs207-8-6 was ordered to be paid to the Postal Department. Fine warrants were issued for the realisation of the fine to the Arsikere Taluk Police and they were returned unexecuted as the accused had no properties there. Since his family was residing in the Mudigere Taluk, the warrants were [illegible] but were received back unexecuted as the accused had neither moveable nor immoveable properties there also.

3. On 8th May 1937, the prisoner brought to the notice of the Court, that a sum of Rs 208/- and odd had been realised from his sureties and prayed that he might be given the benefit of that payment for the termination of default sentences. On enquiry from the Postal authorities and the Taluk Treasury Officer, Mudigere,

p.t.o.

it was ascertained that a sum of Rs. 207-8-6 as noted in the margin had been recovered and credited to the Mudigere Taluk Treasury under the head "His Majesty's Jama Karch Account" per orders of the Deputy Commissioner, Kadur District. The Superintendent, Central Jail, Bangalore, who was informed of this fact enquired whether the above recovery was towards the fine or any other Departmental recovery. The Superintendent of Post Offices, Mysore Division has intimated in his letter No. T.D. 35/36-37 dated 17th May 1937 that the said sum of Rs. 207-8-6 was recovered from the sureties of the accused according to the terms of the security bond executed by them in favour of the accused. It is therefore clear that the amount was realised at the instance of the Postal Department, by the Revenue Authorities. The point for consideration now is whether this recovery can go to the benefit of the accused for the termination of default sentence which he is undergoing from 14th April 1937 although the fine was not recovered by the execution of the warrants issued by the Court.

x

Date of credit.	From whom received.	Amount. Rs.
17-11-1936.	J.W.D'Souza.	50/-
23-11-1936.	Mallegowda.	50/-
4-12-1936.	J.W.D'Souza.	30/-
4- 1-1937.	-do-	23-8-3
7- 1-1937.	Mallegowda.	54-0-3
		207-8-6

Letter No.1272/F.15 dated the 18th May 1937 from the Superintendent, Central Jail, Bangalore, to the Special I C. Magistrate, Hassan.

With reference to your letter No.532/36-37 dated 16-5-3 forwarding copy of ~~xxxxx xxx~~ report together with a copy of Treasury Certificate received from the Amildar, Mudigere Tal and stating that a sum of Rs.207-8-6 has been recovered from the sureties of A.Baptist convict No.9925 of this Jail and credited to the H.M.S.account, I have the honour to state th the information furnished does not clearly show whether the amount levied in respect of the accused was recovered or not

The accused has completed his substantive term of imprisonment and is undergoing default sentence from 14-4-37 and is for release on 14-10-37 if fine amount is not recovered ~~xxxx~~ within that time. I therefore request that necessary action may be taken to intimate whether the amount of Rs.207-8-6 cr dited to H.M.S.account is towards the fine or towards any ot departmental recovery.

An ~~xxx~~ early reply may be sent.

"Copy"

Special I Class Magist
Hassan.

Letter No.F.1-6 dated Mysore 14th/17th May 1937 from the Superintendent of Post Offices, Mysore Division, Mysore to the Special I Class Magistrate, Hassan.

Frauds committed by the extra departmental sub Postmaster, Banaswara, Your letter No.C.512/36-37.

I have the honour to acknowledge the receipt of the above reference and to inform you that a sum of Rs.207-8-6, was recovered from the sureties of the accused by the Deputy Commissioner, Kadur District, as per details below.

Date of recovery	From whom received.	Amount recovered.	Date of credit into the Treas
17-11-36.	Mr.J.W.D'Souza	Rs.50/-	C.No.17-255/17-11-36
23-11-36.	Mr.Mallegowda	50	C.No.24-356/23-11-36
4-12-36.	Mr.J.W.D'Souza	30	C.No.684/4-12-36.
4- 1-37.	Do.	23-8-3	C.No.2.53/4-1-37.
5- 1-37	Mr.Mallegowda	54-0-3	C.No.7-117/7-1-3
		Rs. 207-8-6	

This sum was recovered from them according to the terms the security bond executed by them in favour of the accused.

A letter received from the accused through the Superinte. Central Jail. Bangalore is enclosed for favour of disposal.

" Copy "

Special I Class Magistrate
Hassan.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSOR

General and Revenue Secretariat

No. P.6782

Dated, Bangalore, 7th June 1937

From

The *General Secretary to the Government of His Highness the Maharaja of Mysore.*

To

The District Magistrate,
Hassan.

Sir,

Subject:- Release of A. Baptist, accused in C.C. Nos. 31,32,& 38/36-37 on the file of the Special First Class Magistrate, Hassan, on the strength of the amount recovered through the Revenue Agency.

With reference to your letter No.J. 343/36-37, dated 20th May 1937 I am directed to request you to send for reference copies of the bonds executed by the sureties of A. Baptist as well as copies of judgment where fines were inflicted.

The matter may kindly be treated as urgent.

I have the honour to be,

Sir,

Your most obedient servant,

for General Secretary to Government.

Appendix F G—1]

Immediate

SUBJECT .....

.....

.....

Section Law

File No. 230-36

Serial No. —

Diary No. of letter replied to.....

No. P-6782

To

The Distt Magt

Hassan.

General and Revenue Secretariat

( )

the *193* .

Subject:- Re the Release of A. Baptist, ~~Ex~~ accused in C.C. Nos 31, 32, & 38/36-37 on the file of the Spl I Class Magt, Hassan, on the strength of the amount recovered through the Revenue Agency.

Sir,

With reference to your letter no. JI-343/36-37, dated 26th May '37 on the above subject, I am directed to request you to send for reference copies of the bonds executed by the sureties of

Date of issue 7/6/37

Signed by B.K.R.

List of enclosures.....

Copied by .....

Examined by.....

1. Baptist as well as Copies
of judgment where fines were
inflicted.

The mater may kindly be
treated as urgent

I have etc

BKR

[illegible] Gen. Secy.

C 10 3936
P 836

No: J1-343|36-37 — Office of the District Magistrate,
Ene 3. Hassan District,
Dated Hassan, the 10th June 1937.

From

Abdul Aziz Khan, Esq., B.A.,

District Magistrate, Hassan.

To

M. Venkatesa Iyengar, Esq., M.A.,

General Secretary to Government,

Bangalore.

GENERAL SECRETARIAT 12 JUNE 1937

Sir,

Release of A.Baptist accused in C.C. Nos.31,32 and 33/36-37 on the file of the Special I Class Magistrate, Hassan.-

---

With reference to your letter No.F.6782/Law dated 7th June 1936 on the above subject, I have the honor to forward herewith the copies of judgment in the said cases and to state that the Special I Class Magistrate, Hassan, reports in his letter No.559/36-37 dated 9th June 1937, that the bonds executed by the sureties of the accused, in favour of the Postal Department are not in the court and it is likely that they might have been returned to them by the Postal authorities after cancellation on realisation of the amount. He has however made a reference to the Superintendent of Post Offices, for sending the same, if available. A further report will be sent, on hearing from him. It is also reported that the accused was in custody during the trial and no surety bond was taken by the Court.

I have the honor to be,
Sir,
Your most obedient servant,

A.K.Khan

District Magistrate,
Hassan District.

In the Court of the Special I Class Magistrate, Hassan.

Dated the 13th day of August 1936.

Present

A. Viswanathan, Esq., B.A., B.L.,
Special I Class Magistrate.

C.C.No. 31/36-37.

Complainant.	Vs.	Accused.
Government.		A. Baptist.

Judgment.

1. The Police of Arsikere Taluk presented a charge sheet to this Court on 28-7-1936 against one Baptist, a Sub Post master at Banawar, under Sections 409 and 477 A- I.P.C. for having committed criminal breach of trust by misappropriating a sum of Rs.34-11-0 paid to him as Post master in respect of a value payable article by one Banappa on 10-7-1936 and for having falsified the accounts by showing in the register of value payables that the article though delivered to the party was still undisposed of.

2. The prosecution examined 5 witnesses and filed 11 exhibits to prove the case. The accused admitted that he was Post master at Banawar. He also admitted having taken Rs.34-11-0 received by him from Banappa in respect of a V.P. article but stated that he was ill from 8-7-1936 onwards and that he does not know what exactly he has written in the register. He was charged under Sections 409 and 477 A of the Indian Penal Code. Accused, while pleading guilty to the charge under Section 409 I.P.C., stated that he is not liable for what he might have written when he was not quite in his senses. He did not further crossexamine the prosecution witnesses or examine any witnesses on his behalf.

3. Accused was Sub Post Master at Banawar till 18-7-1936, Banappa P.W.3 swears that he paid the accused Rs.34-11-0 on 10-7-1936 in respect of a V.P.cover received by him, that the accused delivered the enclosed Railway Receipt but retained cover stating that it was required to make the [illegible]

ecessary entries in the register. The receipt of this money
is not denied by the accused and the accused who has not
accounted for the amount should be presumed to have misappro-
priated it and the accused admits having taken the money
self. The accused who received the money as Sub Post
ter and misappropriated it, is guilty under Section 409
.C.

4. According to the evidence of Banappa P.W.3 and the
eipt Ex.P.7(a), the V.P.cover was delivered to the
ty on 10-7-1936; but the accused seems to have purposely
ained the cover and keeping it in deposit, has shown by
king false entries in the register of value payable
ticles, as if the article delivered to the party is still
disposed of. Apart from the statement of the accused that
s ill at the time and that he does not know what entries he
de, there is no other evidence to show that he was suffering
om any kind of illness on 10-7-1936, and the conduct of the
cused in retaining the cover of the delivered article and
aking false entries in the register shows that the accused,
is capacity as post master, wilfully and with intent to con
is misappropriation, made false entries in the register and
as been held in the case of Venkatakrishnaiya (11 Mys.L.J.p
21) that even if the intention with which the false entr
as made by the accused was to conceal a fraudulent dishones
ct committed by him, the intention will be to defraud with
the meaning of Section 477 A I.P.C. I therefore hold that
accused, by making entries in the register of value payable
articles (Ex.P.6), to show that the article delivered to th
party on 10-7-1936 was still undisposed of, made false entries
wilfully and with intent to defraud and that he is guilty under
Section 477 A of the Indian Penal Code.

5. I therefore find the accused guilty under Sections
409 and 477 A. I.P.C. and sentence the accused to four months
rigorous imprisonment and to pay a fine of Rs.50/- in def
rigorous imprisonment for the offen

nder Section 409 I.P.C. and to suffer three months' rigorous imprisonment for the offence under Section 477 A. I.P.C. the sentences to run concurrently If the amount of fine is recovered, a sum of Rs.34-11-0, the amount misappropriated by the accused will be paid to the Postal Department.

Dictated to the steno-typist and pronounced in open Court this day 13th August 1936.

Sd.A.Viswanathan,

Special I Class Magistrate,
Hassan.

"Copy"

Special I Class Magistrate,
Hassan.

Appendix in C.C.No.31/36-37.

Witnesses examined for the prosecution:
1. Mr.B.Keshava Rao
2. Mr.K.Subrahmanya Iyer
3. Thimmaiya.Basappa
4. Mr.B.Hanumantha Reddy
5. Sreenivasa Iyengar.

Witnesses examined for the defence: Nil.

Exhibits filed for the prosecution:
Ex.P.1. Telegram received from the Superintendent of Post Offices on 20-7-36.
Ex.P.2. Copy of the telegram sent by Arsikere Post Master
Ex.P.3. Copy of the cash remittance sent to the Head Office.
Ex.P.4. Sub Office account.
Ex.P.4a Entry in Ex.P.4 dated 17-7-36.
Ex.P.5. Copy sent (copy of cash remittance)
Ex.P.6. V.P.Article register.
Ex.P.6a Entry re: article No. 1164 in Ex.P.6.
Ex.P.6b Entry in Ex.P.6
Ex.P.7 An unpaid postal cover No.1164 (opened in Court).
Ex.P.7a V.P.Article receipt.
Ex.P.7b A mutchalika of the villagers of Kuravanka village.
Ex.P.8 Cover
Ex.P.8a A file sent in Ex.P.6.
Ex.P.9 Complaint.
Ex.P.10 Railway Receipt No.98.
Ex.P.11 Complaint of Ramaiya, Postal Agent,Banawar.

Exhibits filed for the defence: Nil.

Articles produced in the case: Nil.

In the Court of the Special I Class Magistrate, Hassan.

Dated the 18th day of August 1936.

Present

A. Viswanatham, Esq., B.A., B.L.,
Special I Class Magistrate.

C.C.No.32/36-37.

Complainant. Vs. Accused.

Government. Baptist.

Judgment.

1. The Police of Arsikere Taluk placed a charge sheet in this Court on 28-7-1936 against one Baptist, a Sub Post Master at Banawar, under Section 409 I.P.C. for having committed criminal breach of trust in respect of Rs.171-5-6, which he has received in his capacity as Postmaster and which he has not accounted for.

2. The prosecution has examined 5 witnesses and filed 9 exhibits to prove the case. The accused stated that he had kept the money in the cash chest and that as he was not quite in his senses, he is not in a position to state what became of it. He was charged under Section 409 I.P.C. Accused stated that he is guilty; but that he has not committed the act intentionally. He did not further cross-examine the prosecution witnesses but examined one Dada Sab who was present in Court as his witness.

3. According to the daily accounts (Ex.P.3) submitted by the accused to the Head Office on 18-7-1936, he should have had with him cash Rs.382-6-6, stamps of the value of Rs.45-2-6 and unpaid postage Rs.0-3-0 The 19th happens to be a Sunday which is a day of no transactions; but it appears that on that day, the accused behaved as if he was not quite in his senses, and as desired by him, Ramaiya P.W.3, the deliver, agent, sealed the cash chest in the presence of the accused's wife. Accused's wife P.W.1 swears that the cash chest which was sealed by Ramaiya was in tact till the Inspector of Post Offices arrived and took charge of it; but when the Inspector of Post offices looked into it, there was only cash Rs.6-1-3, the postage stamps value of Rs.33-12-3 and unpaid postage 0-2-0. Though

Though Sunday happened to be a day of no transactions, accused had paid one Rowther Rs.211-7-0 as per Ex.P.6 and the accused had given cards and covers of the value of Rs.5/- to the village Postman as per Ex.P.7. Accused had therefore to account for cash Rs.164 14-3 postage stamps Rs.6-6-3 and unpaid postage 0-1-0 making a sum total of Rs.171-5-6. Accused simply states that he was not quite in his senses and that he could not say what became of the money. According to the accused's wife, accused was quite all right till the evening of 18-7-1936 and it is only on 19-7-1936 that he seems to have behaved as if he was not quite in his senses. Apart from this outward behaviour, whether real or assumed, there is no evidence to show that he was so bad as not to be able to account for the money that had come to his custody as Postmaster, and when the accused is unable to account for the money that he had received, he could be presumed to have misappropriated it. I therefore find the accused guilty of having misappropriated Rs.171-5-6 of Government money. I find the accused guilty of the charge and sentence him to 4 months' rigorous imprisonment and to pay a fine of Rs.200/- in default to suffer anotner three months rigorous imprisonment. If the fine amount is recovered, a sum of Rs.171-5-6, the amount misappropriated by the accused, will be paid to the Postal Department.

Dictated to the steno-typist and pronounced in open Court this day 18th August 1936.

Sd. A.Viswanathan,
Special I Class Magistrate,
Hassan.

"Copy"

Special I Class Magistr
Hassan.

Appendix in C.C.No.32/36-37

Witnesses examined for the Prosecution:
1. Milian Baptist.
2. B. Keshava Rao
3. Ramaiya
4. B.Hanumanthareddy
5. N.L.Narasimha Iyengar.

Witnesses examined for the defence:
1. Dadamiya Sab.

Exhibits filed for the prosecution:
Ex.P.1. Telegram
2. Copy of the telegram
3. Cash remittance account.
4. Do.
5. Sub Office Daily account book.
5a Entry in Ex.P.5 dated 17
6 Receipt of money order
7. Receipt for stamp on a card boa
8. Complaint to Police.
9. Complaint of B.N.Ramaiya.

Exhibits filed for the defence: Nil.

Articles produced in the case:
Art.1 One black coloured seal.

In the Court of the Special 1st class Magistrate, Hassan.

Dated the 17th day of August 1936.

Present:

A. Viswanathan, Esq., B.A.B.L.,
Special 1st class Magistrate.

C.C.No.38 of 36-37.

Complainant. -VS- Accused.

Government. Baptist.

JUDGMENT.

1. The Police of Arsikere Taluk presented a charge sheet in this court on 4-8-1936 against one Baptist, a Sub post master at Banavar under sections 409 and 477 A of the Indian penal code for having committed criminal breach of trust by misappro-priating a sum of Rs. 1-8-0 received by him as post master in respect of a value payable article and for having made false entries in the register of value payable ar icles with a view t show that the article which has been delivered to the party is still undisposed of.

2. The prosecution examined 4 witnesses and filed 8 exhib to prove the case. The accused admitted that he has taken the money and stated that as he was not in his proper senses he does not know what entries he has made in the register of value payable articles. He was charged under section 409 and 477 A of the Indian penal code. He pleaded guilty to both the charges. He did not further cross examine the prosecution witnesses or examine any witnesses on his behalf.

3. A, V.P. article addressed to one pandit in respect of which a sum of Rs.1 - 8-0 had to be recovered was received at the Banavar Post office. This article was entrusted to the village post man Shamachar (PW.4) for delivery. Pandit (PW. 2) swears that he received the V.P. article on 17-7-1936 for which he paid a sum of Rs.1 - 8 - 0 and Shamachar PW.4 swears that he paid this Rs. 1-8-0 to the accused on 18 - 7- 1936 and has

has taken the initials of the accused in his register Ex.P.4 for having delivered the money to the accused. The accused having received the money on 18-7-1936 has failed to account for it and can be presumed to have misappropriated it and since the accused admits having taken the money, I find the accused guilty of having committed criminal breach of trust by misappropriating the sum of Rs.1-8-0 received by him as Post Master on 18-7-1936.

4. The accused who received Rs.1-8-0 in the place of the value payable article on 18-7-1936 should have, while making the entries in the register of value payable articles on 18-7-1936, shown the article as having been delivered to the party on that date; but the accused who misappropriated the amount did not wish to have his misappropriation detected, made entries in the register of value payable articles on 18-7-1936 to show as if the article was in deposit and not delivered to the party. The accused first stated that as he was not quite in his senses he did not know what entries he has made in the register; but after the charge was framed, he pleaded guilty to it. The accused who has misappropriated the amount could be deemed ~~who has misappropriated the amount could be deemed~~ to have wilfully made the false entry in the register of value payable articles and in re. Venkatakrishnaiya (11 Mysore Law Journal 21) it has been held that though the entry is made with a view to screen ~~him~~ himself from detection, he should be deemed to have made it with intent to defraud. I therefore hold that the accused wilfully and with intent to defraud, made false entry in the register of value payable articles and that he is guilty under Section 477-A I.P.C.

5. I therefore find the accused guilty of both the charges and sentence him to one month's rigorous imprisonment and to pay a fine of Rs.20/- in default to suffer another month's rigorous imprisonment for the offence under Section 409 I.P.C. and to one month's rigorous imprisonment for the offence under Section 477-A. I.P.C. The sentences of imprisonment to run concurrently. Out of the fine amount recovered, a sum of Rs.

Rs.1-8-0 misappropriated by the accused will be paid to the Postal Department.

Dictated to the steno-typist and pronounced in open Court this day 17th August 1936.

Sd.A.Viswanathan,
Class
Special I/Magistrate,
Hassan.

"Copy"

Special I Class Magistrate
Hassan.

Appendix in C.C.No.36/36-37.

Witnesses examined for the prosecution.
1. Mr.B.Keshava Rao
2. Vasudevo Narayan Pandit
3. Mr.Hanumanthareddy
4. Shamacher.

Witnesses examined for the defence: Nil

Exhibits filed for the prosecution:
Ex.P.1. Telegram
Ex.P.2. Telegram copy
Ex.P.3. V.P.Register
Ex.P.3a Entry in Ex.P.3 re &573/9-1-36 Ex.P.3c Entry in Ex.P
Ex.P.3b Signature of the Village Postman in Ex.P.3.
Ex.P.4a Entry in Ex.P.4 re: delivery of the V.P.Articles to the Postman.
Ex.P.4b [illegible] Initials of the accused
Ex.P.5. Money order form.
Ex.P.6. Covering of the V.P.Packet.
Ex.P.7. Complaint.
Ex.P.8 Report of Ramaiya, Postal Delivery Agent.

Exhibits filed for the defence: Nil.

Articles produced in the case: Nil.

No: Jl-343/36.37.
Ene Two.

Office of the District Magistrate,
Hassan District,
Dated Hassan, the 17th June 1937.

From

Abdul Aziz Khan, Esq., B.A.,
District Magistrate, Hassan.

ÉRAL SECRETARY.
19 JUNE 1937

To

M. Venkatesa Iyengar, Esq., M.A.,
General Secretary to Government,
Bangalore.

Sir,

In continuation of this office letter No. Jl.C.343-36 date June 1937 re: the release of A. Baptist, I have the honor to forw herewith a copy of the letter No.F.1-6 dated 14th June 1937 from Superintendent of Post Offices, Mysore Division and a copy of the petition from the prisoner in the matter of his release received the Special First Class Magistrate, Hassan, for favour of kind pe and early orders of Government.

2) The letter of the Superintendent clearly indicates that th covery of the amount by the Postal Department was an act indepen the order of the Court and was based upon the security furnished official to the Postal Department. Hence the accused in the case be allowed to count that towards part payment of the fine.

I have the honor to be,
Sir,
Your most obedient servant

District Magistrate,
Hassan District.

Indian Posts and Telegraphs Department.

From

G.G.E.Combes,Esq.,
Superintendent of Post Offices,
Mysore Division, Mysore.

No.F.1-6

To

The Special First Class Magistrate,
Hassan.

Dated Mysore, the 14th June 1937.

Your letter No.To.540/36-37.

Sir,

In continuation of my letter No.F.1-6 dated the 10th June 1937, I have the honour to inform you that the Court can apply to the benefit of the convict only amounts recovered from his own property and not from that of his sureties. The recovery was made by the Department purely on the authority of the Security Bond executed by the sureties and not on the strength of the court's conviction. The amount recovered from the suretie of the convict is, therefore, exclusively the property of the Post Office and it cannot, therefore, be remitted into Court.

I have the honour to be,
Sir,
Your most obedient servant,

Sd. G.G.E.Combes,

Superintendent.

"Copy"

Special I Class Magistrate.
Hassan.

In the Court of the Special I Class Magistrate, Hassan.

Cr.Cases Nos.31,32 and 38 of 1936-37.

Accused. Vs. Complainant.

A. Baptist. Government.

The humble petition of the accused A.Baptist.

The petitioner begs to ~~xx~~ represent as follows:-

I. That fines amounting to Rs.270/- in the aggregate were imposed on him as noted hereunder, the default sentences also being as noted against each:-

	Fines imposed	Default sentence.
1 C.C.No.31/36-37 ..	Rs.50/-	2 months
2 C.C.No.32/36-37 ..	" 200/-	3 "
3 C.C.No.38/36-37 ..	" 20/-	1 "
Total	Rs.270/-	6 months

II. ~~That~~ It was ordered in the judgment that if the fine was recovered the sums misappropriated by the petitioner which formed the subject matter of the 3 criminal cases as noted below should be paid to the Postal Department.

C.C.No.31/36-37	Rs.34-11-0
C.C.No.32/ "	" 171- 5-6
C.C.No.38/ "	" 1- 8-0
Total	Rs207- 8-6

III. From the correspondence made by the above court with the Posaal Inspector, Hassan, it is clear that the Department has recovered from the sureties of the petitioner a sum of Rs. 207-8-6, towards making up the sum misappropriated by the petiti and which formed the subject matter of the criminal cases in the above court

IV. The petitioner begs therefore to submit that the recover of Rs.207-8-6 by the Postal Department has to be construed as the partial recovery of the fine in each of the 3 cases to the extent of the amounts misappropriated in each case and the petitioner given the benefit of proportionate reduction in the default sentence.

V. It is also clear from the correspondence between the abov Court and the Postal Inspector ~~x~~ that the recovery of Rs.207-8-6

Rs.207-8-6 is towards the sums misappropriated in respect of these 3 cases and not towards anything else.

VI. Assuming for argument's case that another sum of Rs. 270/- is somehow recovered by the Mysore Government towards the fine and out of that a sum of Rs.207-8-6 is offered to the Postal Department, it is sure to decline to accept the same as its loss has already been made good.

VII. The petitioner begs to submit that he had to undergo about 2 months' R.I. for the unrecovered portion of fine of Rs. 52-7-6 in the 3 cases which he has already undergone as he commenced to undergo the default sentence from 14-4-37 and any more detention in the Jail will amount to unnecessary detention.

VIII. For the foregoing reasons, the petitioner prays that all the above facts may kindly be considered urgently and the petitioner ordered to be set free.

If for any reason such an order cannot be passed, the petitioner prays that a copy of the order passed on this petition may kindly be granted to him immediately so that he may prefer an appeal to the High Court.

Sd.A.Baptist

4th June 1937.

Prisoner No.9925,
Bangalore Central Jail.

No 164/1 Encl One

Forwarded with compliments to the Special I Class Magistrate Hassan, for disposal.

Sd. R.P.Mallappa,
Superintendent, B.C.Jail.

"Copy"

Special I Class ~~Magistrate~~,
Hassan.

Jl.C 343/36
w Bondavale.

Office of the District Magistrate,
Hassan District,
Dated Hassan, the 24th June 1937.

Laws 28 B.

From

Abdul Aziz Khan, Esq., B.A.,

District Magistrate, Hassan.

To

GENERAL SECRETARY.
29 JUNE 1937

M. Venkatesa Iyengar, Esq., M.A.,

General Secretary to Government,

Bangalore.

Sir,

June 23-6-36

In continuation of this office letter No. Jl.C.343-36 dated 17th June 1937, re. the release of A. Baptist, I have the honor to forward herewith the security bond executed by the sureties, for kind perusal and return.

I have the honor to be
Sir,
Your most obedient servant

For District Magistrate,
Hassan District.

absent from HQ

Subd:
The main file has been submitted to the Gen: Secy. on 26-6-37.

This may be filed with the main file after its return

30.6

G. R. S. App. F VI—G 2]

SUBJECT .....

.....

.....

Diary. No. of letter replied to.....

General and Revenue Secretariat

( )

the *193*

Date of issue.....4.8.....193

Signed by .....BKR.....

May this be—

(i) printed?

(ii) treated as a standing order?

(iii) published in the Gazette, English Part?

(iv) translated?

(v) placed at the disposal of the press?

(vi) published in the Gazette, Kannada Part?

Section Law

File No. 230-36

Serial No. 2

Proceedings of the Government of His Highness the Maharaja of Mysore.

Read— Letter no. JI- 343/36-37, dated 20th May 1937; from the Dist Magl, Hassan, stating ~~Bill~~ to the Postal Department the amount due from one A. Baptist, Ex-Branch Post Master of Bonavar (who was sentenced to imprisonment by Ist class magistrate Hassan) was realised at the instance of the postal department from the Sureties whom on account, by the Bankers was forwarded to Postal Department Authorities, and requesting instructions as to whether this recovery can go to the benefit of the accused for the termination of the default sentence which he is undergoing from

4th April 1937, although
fine amount was not recovered
by the execution of the Warrants
issued by the Court.

Order P672-4/Rec 2.

One A. Baptist, Ex-Branch
Asst Master, Banavar, was
convicted and sentenced in three cases by the Special 2nd class Magt. Hassan, in Three Cases
to
five months rigorous imprisonment
and a fine of Rs 270/- and
in default to undergo rigorous
imprisonment for six months.
It was further ordered that out
the fine recovered, Rs 207-8-6
shall be paid to the Postal Department.
Since it is reported that
at the instance of that department,
a sum of Rs 208/- has been
raised from the sureties of the accused
who had furnished to the Postal Department
& the substantive
term of imprisonment has

No. of the cases
to be typed
CC No. 31/36-37
" 32/36-37
" 33/36-37

List of Enclosure

Copied by

Examined by

G. R. S. App. F. G. 3.

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

been undergone by the accused and he is undergoing only the Sentence in default of payment of fine.

Under Section 401 of the Criminal Procedure Code Govt. are pleased to order, ~~that~~ as a matter of grace, and accused be released, in view of the fact that the amount due to the Postal Department has been recovered, that the Sentence which an accused has undergone is sufficient and that he be released.

Qud 4/8

MKR 4/8

General Secretary.

To

(1) The D. G. of Prisons

(2) The D. G. of Police

(3) The D. R. Hassan with Records (Personal Security Bond)

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

- - -

Read-

Letter No. J1-343/36-37 dated 20th May 1937, from the District Magistrate, Hassan, stating that the amount due to the Postal Department from one A. Baptist, Ex-Branch Post-Master of Banavar (who was sentenced to imprisonment by the First Class Magistrate, Hassan) was realised at the instance of the Postal Department, from the sureties whom the accused had furnished to the Postal Department, and requesting instructions as to whether this recovery can go to the benefit of the accused for the termination of the default sentence which he is undergoing from 14th April 1937

Order No. P. 672-4 Law 230-36-2.

Dated Bangalore, 4th August 1937.

One A. Baptist, Ex-Branch Post-Master, Banavar, was convicted by the Special First Class Magistrate, Hassan, in three cases and sentenced to nine months' rigorous imprisonment and a fine of Rs.270 and in default to undergo rigorous imprisonment for six months. It was further ordered that out of the fine recovered, Rs.207-8-6 should be paid to the Postal Department. It is reported that at the instance of that department, a sum of Rs.208 has been realised from the sureties whom the accused had furnished to the Postal Department. The substantive term of imprisonment has been undergone by the accused, and he is undergoing only the sentence in default of payment of fine.

Under section 401 of the Criminal Procedure Code, Government are pleased to order, as a matter of grace, and in view of the fact that the amount due to the Postal Department has been recovered, that the sentence which the accused has undergone is sufficient and that he be released.

B.N. Ramakrishnaiya

for General Secretary to Govt.

The Inspector General of Prisons in Mysore
The Inspector General of Police in Mysore
The District Magistrate, Hassan with records (Personal Security Bond)